

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)

PU'UIWAIWA, LLC, nka)
PU'UIWAIWA RANCH LIMITED)
PARTNERSHIP)

DOCKET NO. 2007-0303

For a Declaratory Ruling.)
_____)

ORDER NO. 23982

RECEIVED
2008 JAN 28 A 9 02
DIV. OF PUBLIC UTILITIES
DEPT. OF LAND & NATURAL RESOURCES
STATE OF HAWAII

Filed Jan. 25, 2008

At 1 o'clock P.M.

Karen Higashi.
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Karen Higashi.

In the Matter of the Petition of))
)
 PU'UIWAIWA, LLC, nka)
 PU'UIWAIWA RANCH LIMITED)
 PARTNERSHIP)
)
 For a Declaratory Ruling.)
 _____)

Order No. 23982

HRS § 269-7.5(d).

establishing certain dates to govern the remainder of this proceeding for a declaratory ruling, including the date of the evidentiary hearing, as further explained below.

I.

Background

On August 29, 2007, Petitioner filed its Petition for Declaratory Ruling.² On October 4, 2007, the commission granted WHWC's motion to intervene, and declined to issue a declaratory order within forty-five days following the filing of the Petition, and instead, set this matter for a hearing, following the completion of the pre-hearing process, unless a hearing was affirmatively waived by the Parties:³

²Petition for Declaratory Ruling and Memorandum in Support; Exhibits A - C; Verification; Consent in Writing of the Managing Member of Pu'uiwaiwa, LLC; and Certificate of Service, filed on August 29, 2007 (collectively, "Petition"). Petitioner: (1) filed its Petition pursuant to HAR chapter 6-61, subchapter 16, governing declaratory orders; and (2) served copies of its Petition upon the Consumer Advocate and WHWC.

³HAR §§ 6-61-159, 6-61-162, 6-61-165, and 6-61-166 provide:

§6-61-159 Who may apply. On the petition of an interested person, the commission may issue a declaratory order as to the applicability of any statute or any rule or order of the commission.

§6-61-162 Commission action. (a) Within forty-five days after the submission of a petition for declaratory ruling, the commission shall:

- (1) Deny the petition in writing, stating the reasons for that denial;
- (2) Issue a declaratory order on the matters contained in the petition; or

WHWC is expressly cautioned that its participation as an intervenor in this docket will be limited to the issues raised in this proceeding. The commission will preclude any effort by WHWC to unreasonably broaden the issues, or unduly delay the proceeding, and will reconsider its participation in this docket if, at any time during the course of this proceeding, the commission determines that WHWC is unreasonably broadening the pertinent issues raised or unduly delaying the proceeding.

The Parties shall submit for the commission's review and consideration a stipulated prehearing order by October 29, 2007, provided that if the Parties are unable to agree on a joint prehearing order, each party shall submit its own proposal by the same date. The stipulated prehearing order shall: (1) incorporate the issues raised in this proceeding, as identified on page 2, paragraph 3, of the Petition; and (2) include a hearing,

(3) Set the matter for hearing, as provided in subchapter 3.

(b) If the matter is set for hearing, the commission shall render its findings and decision, unless otherwise indicated at the time of the hearing, within thirty days after the close of the hearing or, if briefs are filed, thirty days after the last brief is filed.

§6-61-165 Request for hearing. Although in the usual course of disposition of a petition for a declaratory ruling no formal hearing will be held, the commission may order a hearing. Any petitioner or party in interest who requests a hearing shall state the reasons why a hearing is necessary and, to the extent that the request for a hearing is based upon factual assertion, shall attach an affidavit establishing the facts. If the commission orders a hearing, the provisions of subchapter 3 shall govern the proceeding.

§6-61-166 Applicability of order. An order disposing of a petition for a declaratory order applies only to the factual situation described in the petition or if, a hearing is held, as set forth in the decision and order.

HAR §§ 6-61-159, 6-61-162, 6-61-165, and 6-61-166.

consistent with HAR §§ 6-61-162(a)(3) and 6-61-165, unless a hearing is affirmatively waived by the Parties. Thus, by this action, the commission declines to issue a declaratory order within forty-five days following the filing of the Petition, and instead, sets this matter for a hearing, following the completion of the pre-hearing process.

Order No. 23697, at 13-14.

Petitioner and the Consumer Advocate (collectively, the "Stipulating Parties") reached agreement on a proposed procedural order, but were unable to reach an agreement with WHWC. Thus, on October 29, 2007, the Stipulating Parties filed their Proposed Procedural Order, and WHWC filed its Proposed Prehearing Order.⁴

On November 13, 2007, the commission issued Prehearing Order No. 23827, which sets forth the issues, procedural schedule, and procedures to govern this proceeding. With respect to the procedural schedule, Prehearing Order No. 23827 provides in relevant part:

The commission will also schedule this matter for an evidentiary hearing, at a date and time to be determined by the commission, preceded by a deadline date for WHWC to notify the commission and other parties as to whether it waives the evidentiary hearing. The evidentiary hearing, if not waived, will be preceded by a prehearing conference with the Parties. Lastly, the commission will establish a deadline date for the filing of simultaneous post-hearing briefs, as proposed by WHWC, in the event that an evidentiary hearing is held in this matter.

.

⁴The Stipulated Parties stated that an evidentiary hearing was not necessary, while WHWC stated that it was unable to waive an evidentiary hearing until it was first given the opportunity to review the information received in response to its information requests.

Schedule of Proceedings

The Parties shall adhere to the Schedule of Proceedings set forth below:

<u>Procedural Steps</u>	<u>Deadline Date</u>
Issuance of information requests by the Parties	November 26, 2007
Responses to information requests	December 17, 2007
Parties' Statements of Position*	January 7, 2008

*To the extent applicable, the Statements of Position shall identify the witness or witnesses who are sponsoring the facts set forth in the respective Statements of Position.

WHWC to notify the commission and other parties on whether it waives the evidentiary hearing**	January 14, 2008
--	------------------

**In the event that WHWC does not waive the evidentiary hearing, the commission may, on its own motion, amend this Prehearing Order by requiring the Parties to file written testimonies prior to the evidentiary hearing.

Prehearing conference	To be scheduled by the commission
Evidentiary hearing	To be scheduled by the commission
Parties' Post-Hearing Briefs	Three weeks following the filing of the official transcripts

Prehearing Order No. 23827, at 6-8.

On December 17, 2007: (1) Petitioner responded to WHWC's information requests; and (2) WHWC responded to

Petitioner's information requests.⁵ No information requests were issued to or by the Consumer Advocate.

On January 7, 2008, the Parties filed their respective position statements.⁶ Subsequently, by letter dated January 14, 2008, WHWC "notifie[d] the Commission and the other parties to this docket that it does not waive the evidentiary hearing."⁷ Thus, consistent with Prehearing Order No. 23827, "[t]he evidentiary hearing, if not waived, will be preceded by a prehearing conference with the Parties."⁸

Here, the commission, on its own motion, amends Prehearing Order No. 23827 by establishing the following dates to guide the remainder of this proceeding:

<u>Procedural Steps</u>	<u>Deadline Date</u>
Any written testimonies and exhibits, consistent with HAR §§ 6-61-45 and 6-61-46	February 19, 2008
Prehearing conference	March 3, 2008, 9:30 a.m., commission's hearing room
Evidentiary hearing	March 17, 2008, 9:30 a.m., commission's hearing room

⁵In their responses, Petitioner and WHWC identify the individuals sponsoring or responsible for their respective answers to the information requests.

⁶Section II.B, Schedule of Proceedings, of Prehearing Order No. 23827, provides that "[t]o the extent applicable, the Statements of Position shall identify the witness or witnesses who are sponsoring the facts set forth in the respective Statements of Position." None of the position statements identify any sponsoring witnesses.

⁷WHWC's letter, dated January 14, 2008, at 1.

⁸Prehearing Order No. 23827, at 6-7; see also id., Section II.B, Schedule of Proceedings, at 8.

In addition, the deadline for the filing of post-hearing briefs, as set forth in Prehearing Order No. 23827, remains unchanged:

<u>Procedural Steps</u>	<u>Deadline Date</u>
Parties' Post-Hearing Briefs	Three weeks following the filing of the official transcripts

III.

Orders

THE COMMISSION ORDERS:

1. Prehearing Order No. 23827, filed on November 13, 2007, is amended by the commission on its motion, consistent with the terms of this Order. Specifically, Prehearing Order No. 23827 is amended by establishing the following dates to guide the remainder of this proceeding:

<u>Procedural Steps</u>	<u>Deadline Date</u>
Any written testimonies and exhibits, consistent with HAR §§ 6-61-45 and 6-61-46	February 19, 2008
Prehearing conference	March 3, 2008, 9:30 a.m., commission's hearing room
Evidentiary hearing	March 17, 2008, 9:30 a.m., commission's hearing room

2. In all other respects, Prehearing Order No. 23827 remains unchanged, including the deadline for the filing of post-hearing briefs:

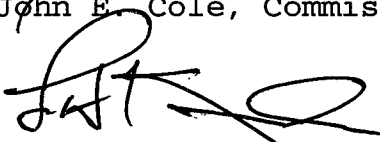
<u>Procedural Steps</u>	<u>Deadline Date</u>
Parties' Post-Hearing Briefs	Three weeks following the filing of the official transcripts

DONE at Honolulu, Hawaii JAN 25 2008.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Michael Azama
Commission Counsel

2007-0303.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23982 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

SANDRA-ANN Y.H. WONG, ESQ.
1050 Bishop Street #514
Honolulu, HI 96813

Counsel for PU'UIWAIWA, LLC, nka
PU'UIWAIWA RANCH LIMITED PARTNERSHIP

ROGER A. HARRIS
PU'UIWAIWA RANCH LIMITED PARTNERSHIP
P. O. Box 803
Kamuela, HI 96743


JEFF PARKER
KILAUEA TRUST I AND WAIMEA LIMITED PARTNERSHIP
1801 White Hawk Court
Las Vegas, NV 89134

BRUCE MOORE
DEVELOPMENT MANAGER
WEST HAWAII WATER COMPANY
150 Waikoloa Beach Drive
Waikoloa, HI 96738-5703

Certificate of Service
Page 2

BRUCE D. VOSS, ESQ.
LORI N. TANIGAWA, ESQ.
BAYS, DEEVER, LUNG, ROSE & HOLMA
Alii Place, 16th Floor
1099 Alakea Street
Honolulu, HI 96813

Counsel for WEST HAWAII WATER COMPANY



Karen Higashi

DATED: JAN 25 2008